

Who are these youths? Language in the service of policy

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Abstract

In the 1990s policy relating to children and young people who offend developed as a result of the interplay of political imperatives and populist demands. The ‘responsibilisation’ of young offenders and the ‘no excuses’ culture of youth justice have been ‘marketed’ through a discourse which evidences linguistic changes. This article focuses on one particular area of policy change, that relating to the prosecutorial decision, to show how particular images of children were both reflected and constructed through a changing selection of words to describe the non-adult suspect and offender. In such minutiae of discourse can be found not only the signifiers of public attitudinal and policy change but also the means by which undesirable policy developments can be challenged.

Introduction

In my childhood in rural, working class Derbyshire, the term ‘youth’ was a friendly mode of address, on a par with ‘love’ and ‘duck’. Maybe my family stretched the limits of its use but I recollect ‘youth’ being used to greet young and old, male and female. In that context the section of the latest version of the Code for Crown Prosecutors (CPS, 2000: after para 6.8) which is entitled ‘Youths’ is acceptable: in the context of youth justice policy it is problematic.

The Code gives guidance to the Crown Prosecution Service (CPS) in relation to the decision whether or not to prosecute any suspect above the age of criminal responsibility. Issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985, the



Code applies, therefore, to both adults and those minors deemed criminally culpable. Since the abolition, by section 34 of the Crime and Disorder Act 1998, of the rebuttable presumption that 10-13 year olds are *doli incapax*, the Code is potentially applicable to all over the age of ten years (see, for example, Bandalli, 1998, 2000; Fortin, 1998: 439-449). The latest edition of the Code, the fourth, was published in October 2000 in the same format as the 1994 version, with lists of ‘common public interest factors’ both ‘in favour of prosecution’ (CPS, 2000: para.6.4) and ‘against prosecution’ (ibid: para 6.5) which must be considered if the case passes the evidential test. A prosecution is considered either more or less ‘likely to be needed if’ any of the factors on the lists are present in the case under consideration and the nature and range of factors on both lists are almost as before. Prosecutors must consider, *inter alia*, whether the defendant was in a position of trust, premeditated the offence and/or was a ringleader, was motivated by discrimination or targeted a vulnerable victim on the one hand and, on the other, whether the offence was committed by mistake, led to minor harm only or caused loss that was put right by the defendant. In addition guidance on the relationship between the victim and the public interest has been expanded from one to two paragraphs (CPS, 2000: paras 6.7 and 6.8) in order to give more weight to the interests of the victim.

There is a considerable amount of discretion here: paragraph 6.6 points out that making a decision about the public interest ‘is not simply a matter of adding up the number of factors on each side’ but, rather, factors need to be weighted in relation to the circumstances of each case. The specific guidance in relation to prosecution of minors is, therefore, very important in this balancing exercise. As in the 1994 version, the next part of the Code concentrates on this issue, dealing in one paragraph with general principles (CPS, 2000: para 6.9) and in a second paragraph with alternatives to prosecution (ibid: para 6.10). This latter paragraph replaces previous



guidance on cautioning with guidance on practice in relation to the new statutory scheme of reprimands and final warnings (Fionda, 1999; Gelsthorpe and Morris, 1999) which was introduced by section 65 and 66 of the Crime and Disorder Act 1998 in place of cautions. It is these two paragraphs (6.9. and 6.10) which are now entitled ‘Youths’.

‘Youth’ is a complex word. It can be used as an adjective to mean ‘of (or for) young people’, as in National Youth Orchestra or Youth Club, and as a noun to signify a stage in life or a person at that stage in life. All these possibilities can be found in various versions of the Code. In the original 1986 Code (CPA, 1988: para 8) the seven listed factors ‘which can properly lead to a decision not to prosecute’ included ‘Youth’ - the stage in life - being used as a condition akin to ‘Old age and infirmity’ and ‘Mental illness and stress’ which followed it in the list. In the 1994 version the side heading ‘Youth offenders’ evidenced a new use of ‘youth’ as adjective (CPS, 1994: above para 6.8). ‘Youth’ as a noun to refer to a person also appeared in 1994 (ibid, para 6.8): ‘Crown Prosecutors must consider the interests of *a youth* when deciding whether it is in the public interest to prosecute’ (emphasis added). As noted above, not until the 2000 version was ‘youths’ used to refer to a category of children and young people.

It may be tempting at this stage to conclude that tracing changes in word use is a tedious and pointless exercise but we are now well aware that the nuances of meaning attached to language are contingent on time and on geographical or discursive ‘place’. The potential significance of these changes lies in our idea, ‘now commonplace’ (Buckingham, 2000: 6), that meanings are socially constructed, both reflecting and determining what counts as ‘reality’. In particular, our ‘vision’ of what a child ‘is’ (Jenks, 1996: 51) and what is deemed to distinguish a child from an adult (Archard, 1993: 20) determine our notions of what is appropriate treatment of children.



Within this context, the ‘word choice’ of the drafters of the various versions of the Code becomes an indicator, not only of changing conceptions of children who offend, but also of political imperatives to legitimate changed policies. That word choice is, then, also part of the process of constructing new images of children.

‘Youth’ justice policy before 1993.

The 1970s and 1980s had seen the development of an increasingly important policy of diversion of young offenders from prosecution (Ball, 1995; Goldson, 1999, 2000a), with research about such offenders feeding into policy and ‘science-within-law’ (King and Piper, 1995: 107-112). The first edition of the Code (CPS, 1988) gave a clear message in support of diversion. Not only could the factor of ‘youth’ ‘properly lead’ to a caution instead of prosecution but it was also made clear that prosecution could be positively detrimental:

‘The stigma of conviction can cause irreparable harm to the future prospects of a young adult, and careful consideration should be given to the possibility of dealing with him or her by means of a caution’ (the Code in CPS, 1988: para 8(iii)).

Similarly clear, under the heading ‘Juveniles’, was the following:

‘It is a long standing statutory requirement that the Courts shall have regard to the welfare of the juvenile ... in deciding whether or not the public interest requires a prosecution the welfare of the juvenile should be fully considered.

There may be positive advantages for the individual and for society, in using prosecution as a last resort and in general there is in the case of juvenile offenders a much stronger presumption in favour of methods of disposal which fall short of prosecution unless the seriousness of the offence or other exceptional circumstances dictate otherwise. The



objective should be to divert juveniles from court wherever possible. Prosecution should always be regarded as a severe step' (the Code in CPS, 1991: paras 20-21).

The changes in the jurisdiction of the Juvenile Court and its re-naming as the Youth Court did not necessarily signify a move away from this policy of diversion. The Government White Paper had stated that 'The Government considers that 16 and 17 year olds should be dealt with as near adults' (Home Office, 1990: para 8.16) and, with the inclusion of 17 year olds, 'The present juvenile court will be renamed the youth court' (para 8-30).

'The age balance of those appearing before the juvenile court is changing. In 1988, nearly 90% were aged 14-16. ... If the proposal for the court to hear most cases with defendants aged 17 is implemented, it is estimated that about three-quarters of the defendants appearing before it will be aged 16 or 17. The name of the court [the youth court] should reflect this considerable change of responsibilities' (Home Office, 1990: para 8-30).

This choice of name was apparently not seen as problematic even by those academic commentators who were generally critical of the development:

'The Government proposed ... that 17 year olds - then dealt with as adults - should be defined as young persons and come within the jurisdiction of the juvenile court ... The name would be changed from 'juvenile' to 'youth' to reflect bringing the older defendants within the jurisdiction' (Ball, 1995: 196).

The Labour Party, then in Opposition, was also in favour of a changed jurisdiction for the juvenile court as being conducive to *less* punitive outcomes for 17 year olds (though a new name



was not suggested):

‘At the present time, twice as many 17 year olds as 16 year olds receive custodial sentences, although a similar number of 16 and 17 year olds commit offences each year. [1988 Criminal and Prison Statistics] Raising the maximum age limit for the juvenile court would produce a more logical cut-off point in line with the age of majority; would bring 17 year olds within the more constructive sentencing tradition of the juvenile court; and would also bring the country into line with most west European nations’ (Labour Party, 1990: 22).

As the Children Act 1989 had already reorganised the domestic work of the Magistrates Court and the child care work of the Juvenile Court into ‘family proceedings’, the Criminal Justice Act 1991 sections 68 and 70 completed the move to a Youth Court dealing only with (suspected) offenders under 18. ‘Youth’ was not self-evidently an inappropriate word choice, given its use in other contexts to refer to the age range in question, and ‘juvenile’ felt out-dated. What appeared not to have been taken into account was that the new adjective for describing the court might be extended - for the apparent sake of consistency - to ‘the system’ and its users in ways that were less appropriate. Furthermore, it did not take account of the fact that the meanings attributed to the concept of ‘youth’ in the policy area where it had been most employed - that of youth and community work - were changing in significant ways.

The youth work context

Youth - even as an adjective - has never been ‘neutral’ in the context of youth work. The ‘child as threat’, though not the dominant image of the child influencing Parliamentary law-making for most of the last two centuries (Piper, 1999a), has been an ever present motivation for charitable and state intervention in the family (Eekelaar *et al*, 1982; Hendrick, 1994; Morris and



Giller,1987) and also specifically in relation to youth work (Stenson and Factor, 1995). The Education Act 1944, as amended by section 120 of the Education Reform Act 1988 (see Paraskeva,1992), established the British Youth Service by placing a duty on local authorities to secure the provision of social, physical and recreational training for young people through a variety of often uncoordinated providers in the voluntary and public sectors.

In company with all public welfare services - and it was estimated that 25% of the Local Authority budget was spent on the voluntary sector in the early 1990s (Stenson and Factor, 1995: 173) - the publically funded Youth Service has experienced managerial change and financial cutbacks. As a result, from the mid 1980s, Youth Service providers were increasingly reliant on other sources of funding, such as 'Safer Cities', 'City Challenge' and The Prince's Trust, as well as large corporations. As Stenson and Factor (1995: 174-5) point out, these new stakeholders incorporated new priorities of community regeneration, skills training for marginalised young people and crime prevention. This conditional funding also needs to be seen in the context of the managerial requirement of measurable outcomes (Paraskeva, 1992): the combined effect was to require that the needs of young people and the problems facing them 'be coded narrowly within the terms of policing, crime prevention and control in order to release resources' (Stenson and Factor, 1995: 175).

In line with similar developments in Local Authority Social Services Departments, where the provision of family services to children 'in need' have increasingly been confined to those deemed 'at risk', 'youth' in the youth service have been re-positioned as at risk of a life-time of criminality rather than as children and young people with complex needs. They have increasingly been marginalised as 'the other', the anti-social youth who cannot be a child but who is constituted as a future criminal, unemployed and unemployable. Those were the increasingly



powerful meanings that were - wittingly or otherwise - transferred to the young users of the Youth Court.

Changing policy

As many analysts have made us aware, the crucial time of policy change was 1991-9, with the the murder of James Bulger in 1993 and the moral panic which it triggered being seen as a key turning point (Diduck, 1999; Hirsch and Ashworth, 1998; Littlechild, 1997, Moore, 2000). It is true there were also longer term changes: notions of welfare lost their dominance from the mid-1970s, and the child as entitled to due process rights, and as responsible enough to be dealt with in essentially the same criminal process as adults, regained prominence (see Gelsthorpe, 1999: 221-226). From that time can also be traced the undermining of the positive human sciences - which had challenged a purely 'moral' approach to offending by minors - and those other developments which became 'part of a rising tide of opposition that gradually coalesced into the politics of neo-liberalism' (O'Malley, 2000: 25).

Those caveats notwithstanding, the early 1990s saw changes that were largely unanticipated. The populist mood of retribution led to questioning in the media and in academia about the very nature of childhood (Jenks, 1996: chapter 5). A 're-moralisation project' - aimed at young people and their families- influenced the development of policy in relation to family law and juvenile justice (Day Sclater and Piper, 2000). As a result, policy relating to young offenders became increasingly disciplinary and punitive in approach, politicised as it was at a time of electoral instability (Pitts, 2000) which, by 1996, witnessed 'a Dutch auction of who could seem to be most tough in relation to young people' (Littlechild, 1997: 80).



But the potential electoral benefits to the main political parties from feeding into, and indeed encouraging, the new popular punitiveness, could not have been achieved without a new image of the child to legitimate radically different policies. The political use and encouragement of populist and judicial anxieties about ‘evil’ children which upset fundamental assumptions about childhood itself meant that it became possible to jettison long-standing conceptions of ‘the child’ when talking about offending and to reconstitute them as ‘youths’ on whose behalf there could be no popular and, hopefully, no professional opposition to a policy which both regulated them and treated them as adults (Vaughan, 2000).

It is nevertheless difficult to overestimate the significance of the changes in social and political understandings of the ‘scope’ of childhood that this has entailed. Nineteenth century notions of childhood innocence have been crucial in motivating child protection legislation and legitimating ‘welfarist’ approaches to young offenders (Piper, 1999a; Vaughan, 1999: 361). Whilst, therefore, the child who offends has never, historically, unambiguously been constructed as ‘a victim’ (Fionda, 1999), children who offend have not always been conceptualised very differently from children who need protection (Goldson, 2000b). Even as late as 1989, the Children Act, by section 17 and schedule 2, imposed duties on Local Authorities, in the context of children ‘in need’, to prevent children from offending and to divert them from criminal proceedings. Furthermore, empirical research shows that ‘victims’ and ‘offenders’ are often not separate categories of children. There is evidence about the abusive and conflictive family background of a large proportion of children who offend, particularly persistent offenders (Hagell and Newburn, 1994: chapter 7), those sentenced under section 53 of the Children and Young Persons Act 1933 (now re-enacted in the Powers of Criminal Courts Act 2000 sections 90-92) for murder or grave crimes (Boswell, 1991) and those 12-14 year old offenders eligible for secure training orders



(Crowley, 1998).

The re-conceptualisation of the child has also taken place in the face of a continued reference to 'the child' in legal documents and areas of practice other than criminal justice. The definition of the child in the Children Act 1989 (section 105(1), relating to England, Wales and Scotland; section 108(11)) incorporates the definition of the child as under 18 set out in the UN Convention on the Rights of the Child and in education law there are still 'children'. The 'child' is 'under 16' or under 19 if there are Special Educational [school-based] Needs (Education Act 1996 sections 579(1) and 312(5), respectively). In those two contexts - family and education law - in practice and guidance as well as in legislation and case law minors are referred to as 'children' or 'young people'. Legally speaking, that is also the case for minors who offend: in law the cut off point for most purposes has been the 18th birthday since the Criminal Justice Act 1991 raised the upper limit from 17 for the new Youth Court and for other related powers and duties (see Ashford and Chard, 1997: chapter 2). Legislation has also not amended or replaced the definitions for criminal justice purposes of 'child' being used for those under 14 years of age and 'young persons' for the 14-17s. However, in policy and practice dealing with offending and anti-social minors, the 1990s saw children metamorphose into dangerous youths.

Documenting the metamorphosis

Policy documents from 1994 onwards evidence the gradual introduction - to describe the children concerned - of words which resonated with those overtones already noted in relation to youth work which were deemed necessary to justify changing policy and aid its implementation. In the context of the CPS Codes, the new nomenclature for minors employed in 1994 - together with other relatively subtle changes of wording and emphasis - was to convey and 'sell' a quite



different message from that of previous versions about making decisions on young people who offend (Ashworth and Fionda, 1994; Ball, 1995: 197-9). That message was part of what proved an effective policy of changing attitudes to the prosecution and sentencing of young people: the numbers of children under 18 who received a custodial sentence rose from 4,200 in 1993 to 7,200 in 1998 (NACRO, 2001).

Whilst previously the lists in the Code for Crown Prosecutors had provided robust principles against the prosecution of minors, the 1994 Code was devised within the context of the Attorney General's policy intention 'that the public interest factors *in favour of* prosecution [are] brought out more clearly' (House of Commons debate 14 December 1993: Hansard vol 234 col 1049, italics added). The 1994 guidance (CPS, 1994) followed the approach of the Home Office Circular, the *Cautioning of Offenders* (18/1994), issued two months earlier, and introduced by the Home Secretary with, 'From now on your first chance is your last chance. Criminals should know that they will be punished' (Michael Howard, quoted in Ball, 1995: 198).

Furthermore, the Circular had included the text of the *National Standards for Cautioning (Revised)*, replacing the national standards established by Circular 59/1990. Note 3A of the revised standards included the following statement: 'There should be a presumption in favour of not prosecuting certain categories of offender such as elderly people or those who suffer from some form of mental illness'. No longer is the category of young offenders included in the presumption of diversion. To incorporate the same Home Office message, in the 1994 Code sections from previous versions of the Code were selected, amalgamated and subtly amended:

'Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a youth offender or a young adult. Young offenders can sometimes be

dealt with without going to court. But Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the offender's past behaviour may make prosecution necessary' (CPS, 1994: para 6.8).

The innovative inclusion of the words 'sometimes' and 'simply' in the guidance are very powerful indicators of a new message. In the 2000 version the second and third sentences in the 1994 paragraph were removed:

'Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important' (CPS, 2000: para 6.9).

Apart from the welcome replacement of 'offender' to refer to the, as yet, un-prosecuted - let alone convicted - young person, the 2000 version is much starker in its focus on the seriousness of offending behaviour, shorn as it is of references to the effects of labelling and the future welfare of the young person and no longer softened by the inclusion of 'may'.

What we have, then, within the Code for Crown Prosecutors is a progression from 'juveniles' and 'young persons', through the 'youth offender', to 'youths' or 'defendants' and a progression from a clear policy of diversion to one where prosecution is not to be avoided 'simply because of ... age'. That progressive alteration in words used to refer to children and young people in a document stating or reflecting policy change can be found in other policy documents of the later 1990s.

For several years the words used suggested that images of young offenders were still fluid. *Safer Communities, Safer Britain* referred to 'juvenile offending' and noted that 'young people who currently are unemployed' are the ones 'most likely to offend, and become persistent juvenile and then adult offenders' (Labour Party, 1995: 12). The Road to the Manifesto Labour Party Document, *Tackling Youth Crime: Reforming Youth Justice*, referred interchangeably to 'youth crime' and 'juvenile crime' (Straw and Michael, 1996: 2-3). The Consultation Document *Community Safety Order* - referring to a civil order eventually passed as the anti-social behaviour order - proposed, under the heading 'Juveniles', that the order would be available for the over ten year olds but refers to '*a child* under the age of 15' [emphasis added] in relation to breach provisions (Home Office, 1997a: para 24). The White Paper *No More Excuses* also mentions children, juvenile and youth crime as well as the more paternalistic 'youngsters' (Home Office, 1997b: side heading above para 3.12).

To an extent the plethora of terms in this transitional period reflected both the existence of 'Youth' in the name of the new Court for young offenders and also the ambiguities present in relation to definitions of all these terms. Buss, for example, draws attention to the agreed statement - which she sees as unhelpful - of the World Health Organisation, the UN Children's Fund and the UN Population Fund which defined 'Adolescent' as 10-19, 'Youth' as 15-24 and 'Young People' as 10-24 (Buss, 2000: 289). However, on that definition of youth, a youth court and justice system which deals with the over ten year olds - the age of criminal responsibility - is a misnomer. It is, however, the Crime and Disorder Act 1998 which make clear that images of 'unsocial' children had changed. Sections 8-16 of that Act are headed 'Youth crime and disorder' but deal with orders all of which are available for the under 10 year olds and two of the orders are exclusively for the under 10s (see, for example, Goldson, 1999: 14-17; Piper 1999b).

Significantly, then, youth is now being used to refer not only to males and females aged 10-18 but even to those younger than 10 and it is not everyday practice to refer to a young child, possibly not yet in a secondary school, as 'a youth'. This usage contrasts with usage in those discursive frameworks where youth may be a relatively 'neutral' term in that it signifies only age (for example, youth choir): the participants of such are not labelled as 'youths'.

Responsibility and risk

The increasingly moral discourse within which offending by minors is located - the policy desire to teach right from wrong (see Goldson, 1999: 10; Day Sclater and Piper, 2000: 147-149) and the need to label as different those who have chosen, or appear to be choosing, 'wrong' - has both necessitated and legitimated the linguistic changes. Those children who offend, or - in the case of child safety orders - who are at risk of doing what would be an offence if they were over ten years old, can no longer be referred to as 'children' because they are to be treated in ways which cannot be legitimated by that image of the child which imputes vulnerability and innocence. In being reconstituted as 'youths' the image conveys those meanings which we impute to it from personal experiences when we were referred to as 'the youth of today' and from current understandings of risk and danger. Even if puberty and adolescence can be defined biologically, 'youth' has meanings that are constructed within power and institutional relations (Wynn and White, 1997: 13) and those meanings have negative resonances. The resulting amalgam of meanings imputed and meanings constructed for a purpose are increasingly punitive within what some now see as a 'new culture of intolerance' (Pratt, 2000; see also Muncie, 1999).

This new discursive context for 'juvenile justice' at the end of the 20th century is also the product of a revision of the 'governmental image of ordinary individuals' such that 'Everyone now is to

make an enterprise of their lives' (O'Malley, 2000: 26) and children who offend are no exception. Indeed, the criminal justice system has become a site where our risk society's focus on 'the dangerous' has serious implications for children and young people. As Vaughan (2000: 359) points out, 'We are witnessing an ambivalent movement here: on the one hand, the "psychical distance" between adult and child is being shortened but this is only so that the child can be regulated more intensively'. Active, responsible citizenship is encouraged, indeed mandated, but children must take the consequences if they do not 'play ball': 'Just as social policy is becoming more conditional, so is juvenile justice' (Vaughan, 2000: 349). Once they have offended (or taken part in anti-social behaviour) they become youths whose lives can be regulated, who must actively participate in their rehabilitation or who are increasingly defined as dangerous. Recent American research also sounds a different warning note: that there can be selective manipulation of the alternative conceptions of young people as dependant and vulnerable or as autonomous and responsible to justify policies that entail cultural and racial discrimination (Jackson and Pabon, 2000).

Conclusions

At one level these reconceptualisations and differences in terminology in legal and policy documents do not matter. If all practitioners in the area of youth justice - CPS staff, magistrates, members of youth offending teams, duty solicitors etc - still have in their minds 'children' and 'young people', still see the welfare of the young person as having some relevance to decision-making, still hold the notion that some children do indeed 'grow out of crime' and are not helped to law-abiding lives by negative stereotyping, then the word changes are irrelevant. But of course words do matter. There is a close relationship between the discursive framework - the dominant images of children and the ideologies and knowledges - and what people do. The



rhetoric of *No More Excuses* and the speeches of politicians convey particular messages: to ‘get tough’ and that ‘they are old enough to know better’. This is a great pity as some of the detail in, and the aspirations behind, the new schema for youth justice are positive. The potential benefits will not be realised if the words used to describe the children and young people affected are pejorative and convey assumptions that undermine the young person’s self respect and make more likely those outcomes that do him or her no good.

It is, then, important to contest words used by policy makers and practitioners: they feed into influential images and are crucial in marketing legislation and legitimating guidance. Such contestation has been a feminist tactic and may well lead to similar accusations of paranoia and mole-hill mountains but, through Garland’s work on penal cultures and ‘sensibilities’, we are now more aware of the ‘determinative capacity’ of personally experienced yet socially structured ‘configurations’ and of the interplay between these social and personal sentiments and the operation of the penal system:

‘Penal laws and institutions ... are framed in languages, discourses and sign systems which embody specific cultural meanings, distinctions and sentiments and which must be interpreted and understood if the social meanings and motivations of punishment are to become intelligible’ (Garland, 1990: 198).

The corollary is that configurations, social constructions and images of children can be reconfigured, reconstructed or replaced by other images and sensibilities. There is room for human agency here. This agency is required if Ball’s fears are not to be realised:

‘Despite the fact that the separate treatment of young offenders was officially endorsed as recently as 1990 ... it is arguable that, whatever the rhetoric, the policy reversals of the

last few years demonstrate both deliberate and consequential moves towards treating children and young people no differently from adults throughout their involvement in the criminal justice system' (1995: 197).

Furthermore, as Goldson (2000b: 262) warns, to 'adulterize' and 'responsibilize' those minors who used to be referred to as 'children in trouble' could have severe practical implications - 'the abrogation of professional responsibilities toward "children in need"'.

It is, then, worth making a fuss about words: children are given another chance, for youths - as for adults - there are no more excuses.

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